

# CONSUMERISM: Minnesota Laws for Protection\* and How to be on Guard

## Minnesota Laws on Consumer Protection

### Automobile—Odometer Tampering

It is illegal in Minnesota to sell a motor vehicle with knowledge that the odometer has been disconnected or altered to show less than the actual mileage. Upon transfer of a motor vehicle the seller must disclose in writing the true mileage or that the mileage is unknown if the odometer reading is inaccurate.

If you question the accuracy of your odometer reading, you may obtain the history of the vehicle from the Division of Driver and Vehicle Services, Department of Safety, Transportation Building, St. Paul, Minnesota 55155. With your request, include either the license plate number and \$1.00 or the vehicle identification number (V.I.N.) and \$2.00 to obtain the vehicle's history.

The Division will send you a computer print-out of the prior owners of the vehicle. You may then contact each prior owner and ask what the odometer reading was when he or she sold the motor vehicle.

### Chain Letters Prohibited

Chain or referral sales are prohibited in Minnesota. Referral sales are those sales where a seller gives a discount or gift if you are successful in inducing other buyers to enter into a sales contract with the seller.

Chain sales typically involve a situation where you pay a sum of money (\$25 for example) for a list of names. You send \$25 to the first person on the list and add your name to the bottom of the list. You then sell the list to two more individuals for \$25 each. Theoretically, the chain expands as your name moves up the list, so when you are number one you will allegedly receive \$25 from numerous persons. In practice, however, these chains are doomed to failure and usually the only persons who profit from them are promoters of the chains. They are illegal under Minnesota law.

### Charitable Solicitations

Fraud and deceptive practices are prohibited in connection with the solicitation of contributions. Professional fund raisers are required to be licensed, and all charitable organizations using a professional fund raiser must register with the Department of Commerce. The department may require the professional fund raiser to post a bond and file quarterly financial reports. This law also regulates the compensation payable to a professional fund raiser and the private use of a charitable organization's name for financial gain. Existing law requires the registration of charitable organizations receiving in excess of \$2,000.00 annually through public solicitation.

### Club Contracts

Any person who has elected to become a member of a health club, social referral club, or buying club in Minnesota

\*Prepared by Warren Spannaus, Attorney General, May 1979

has the right to cancel the club contract and his/her membership by giving written notice of cancellation any time before midnight of the third business day following the date the contract was signed. All contracts must clearly state the "Members' Right to Cancel." Every contract which does not contain this notice may be cancelled by the member *at any time* by giving notice of cancellation by any means.

The term of any contract may not exceed 18 months from the date upon which the contract is signed. However, after six months of membership, a member may convert his/her contract into a contract for a period of longer than 18 months.

The law also protects members who pay over \$25 in advance for future services by requiring the club to post a bond.

### **Conciliation Court**

An action may be brought in conciliation court if the total amount of the judgment sought does not exceed \$1,000. The procedure is simple and informal. The conciliation court decision may be appealed by either party to county or municipal court.

County boards are authorized to direct county and municipal courts to hold conciliation court hearings on evenings and/or Saturdays at specified locations throughout the county court district.

For a free pamphlet entitled, *A Consumer's Guide to Conciliation Courts in Minnesota*, write: Consumer Protection Division, Attorney General's Office, 102 State Capitol Building, St. Paul, Minnesota 55155.

### **Consumer Credit Sales**

If you purchased goods on credit you have, in effect, signed a contract promising to pay a specified amount over a certain period of time. Often small businesses will sell these contracts to banks or other institutions. In 1971, a Minnesota law was passed which provides that a consumer with a contract involving a consumer credit sale may pursue all of his/her claims and defenses of defects, etc., against the seller or the third party who purchased the contract.

In 1976, the Federal Trade Commission (FTC) adopted a similar rule. The difference between the FTC rule and Minnesota law is that under the FTC rule, if your product is defective or you have been defrauded, you may sue the third party to whom your contract has been sold. Under the state law, consumers can only take defensive action by stopping payment and then asserting the state law as a defense if the third party tries to collect.

If you default in a consumer credit transaction, and the creditor repossesses or voluntarily accepts the return of the goods in which he has a security interest, you are not liable for any additional unpaid amount due on the loan, and the creditor is not required to resell the goods. This applies only to loans of less than \$3,000. However, you may be liable for the unpaid loan balance if you wrongfully damage the goods, or you wrongfully fail to make the goods available to the creditor. If the creditor chooses to sue you (rather than repossess the property), he may not repossess the property and cannot levy on the goods to satisfy a judgment in the action.

### **Consumer Remedies**

If a person or business has emerged in consumer fraud, false advertising, or certain other unlawful practices relating

to business, commerce, or trade, the person injured by the violation of such laws may sue to recover damages, court costs, attorney's fees, and other relief as determined by the court.

The Attorney General is also authorized to sue persons who violate consumer statutes. He is authorized to seek civil penalties of up to \$25,000 per violation of law. A judgment of a Court in connection with an unlawful business practices suit brought by the Attorney General is declared to be evidence of a violation in an action brought by a private citizen.

### **Credit Card Billing**

Credit card issuers must state on each customer billing statement the name, address, and telephone number of the department designated to receive inquiries regarding billing statements. The credit card issuer must respond in writing within 30 days to any customer's billing inquiry.

If a credit card is lost or stolen, no person in whose name a credit card has been issued shall be liable for any amount in excess of \$50 resulting from the unauthorized use of the card from which he, or a member of his family or household, derives no benefit if the issuer of the credit card is notified of the unauthorized charges within 60 days of receipt of the bill containing the unauthorized charges.

### **Deceptive Trade Practices**

The Uniform Deceptive Trade Practices Act defines certain unfair trade practices. For example, it is a deceptive practice for a person to pass off goods or services as those of another, to represent that goods are original or new if they are reconditioned or used, or to advertise goods or services with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity.

### **Employment Agencies**

Employment agencies are prohibited from advertising jobs for which there is no job order and are required to keep a written record of all job orders for one year. "Job order" is defined as a written or oral notification by an employer of a job opening and a request for an employment agency to provide the employer with applicants.

### **Fire Detection Devices**

Smoke detectors are required in all residential buildings constructed, remodeled, rented, or offered for rent after January 1, 1980. The Commissioner of Public Safety is required to promulgate rules regarding the actual placement and mounting of the detectors. Owners of the buildings are responsible for making sure the detectors are properly maintained. A penalty for violating any order to comply with these provisions is a fine of up to \$500, or imprisonment of up to three months, or both. Local governments may not adopt different standards from those outlined above, except they may request smoke detectors in new construction to be attached to a centralized electrical power source.

### **Funeral Bill Itemization**

Minnesota funeral directors are required to provide, at the time funeral arrangements are made, an itemized statement listing the costs of various funeral items and services to be provided, and a statement of all anticipated cash advances and expenditures. The retail price of caskets must be posted in a conspicuous place on the casket, and no person operating a crematory may require that the remains be placed in a casket.

## Garnishment

Garnishment is a tool which consumers may use in collecting a judgment. It enables creditors to obtain property belonging to the debtor, that is not in the debtor's possession, but is under the control of a third person. In the garnishment process, the third person is known as the garnishee and may be the debtor's employer or bank. A garnishment attaches or freezes the debtor's property in the hands of the garnishee.

The garnishment law offers protection to the debtors as well, because it limits that amount of each pay check which creditors may garnish.

The amount of disposable earnings in a pay period, exempt from garnishment, is the greater of:

- 75 percent of the debtor's disposable earnings or
- 40 times the federal minimum wage multiplied by the number of weeks in the pay period.

In some situations, no monies may be garnished. (For example a debtor's wages may not be garnished if he is currently, or has been within the last six months, a recipient of relief based on need.)

For a free pamphlet, *The Garnishment Process*, contact the Consumer Protection Division, Attorney General's Office, 102 State Capitol, St. Paul, Minnesota 55155.

## Gasoline—Octane Ratings

Motor vehicle fuel pumps must conspicuously display the minimum octane rating and the retail price per gallon, including all federal and state tax, of the motor fuel dispensed

from that pump. The octane rating is to be determined in the manner described in "Standard Specification for Gasoline" prepared by the American Society for Testing and Materials, or in such other manner as prescribed by the Director of Consumer Services.

## Home Improvement—Mechanic's Liens

If contractors, subcontractors, or suppliers are not paid for their work in providing services or supplies for the improvement of real property, a mechanic's lien may be filed against the property improved. A mechanic's lien is a significant encumbrance on property as the lienholder may force the sale of the property to satisfy the amount due. Contractors and subcontractors are required to promptly notify property owners of their rights and possible liabilities in connection with improvements. Failure to give proper notice to the property owner results in the loss of any lien right.

## Home Solicitation Sales

Broad protection is provided to consumers who do not initiate the contract with a seller, but who, nevertheless, enter into a sales contract with a seller at a place other than the seller's normal business location. If the purchase price of the merchandise exceeds \$25, the buyer may cancel the sale by mailing a written notice of cancellation to the seller within three business days after the sale. Upon cancellation, the seller must pick up the goods within twenty days or forfeit all rights to the goods and return any down payment or trade-in.

## Packaging for safety



A seller is required to inform the buyer orally and in writing of his/her right to cancel.

### **Home Warranties**

The following statutory warranties are provided to persons who purchase a new residence on or after January 1, 1978:

- During a one-year period from the warranty date, the dwelling must be free of defects caused by faulty workmanship and defective materials due to noncompliance with building standards
- During the two-year period from the warranty date, the dwelling must be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems
- During the ten-year period from the warranty date, the dwelling must be free from major construction defects

Excluded from warranty protection are detached garages, driveways, walkways, patios, landscaping, fences, and other similar items.

The warranty protection also does not extend to a loss or damage resulting from several specified situations.

The warranty protection cannot be waived or modified unless the seller provides substitute express warranties which offer substantially the same protection to the buyer as the statutory warranties and are approved by the Commissioner of Administration.

### **Indian Made Goods**

All goods which are manufactured or produced in imitation of genuine American Indian-made goods must be labeled with the words "not Indian-made" on a conspicuous part of the finished article.

### **Insulation**

The Minnesota Energy Agency is charged with the responsibility of promulgating rules regarding the quality and product safety specifications for the manufacture, labeling, installation and, thermographing of insulation.

No insulation known to cause physical damage to structures, health hazards to occupants, or release of hazardous substances may be used or offered for sale in Minnesota.

Any and all claims as to "R" value (measures of resistance to heat flow), shrinkage, combustibility, etc., must be substantiated by independent testing laboratories.

In addition, all consumers of insulation must be provided with the manufacturer's written instructions describing the proper methods of application of the insulation, and required or recommended safety measures within 10 days after the insulation is sold.

### **Invention Marketing Services**

Businesses and individuals who develop or promote the inventions of others are regulated by Minnesota law. Since it is difficult to accurately predict which inventions will be marketable, inventors should be cautious about paying advance fees to persons who promise money or a market for the invention. Customers of invention developers have the right to a written statement of the full contract price, a three-day cancellation period, a cautionary warning concerning legal advice on patent matters, and the disclosure of certain information in their contract with an invention developer.

Among the disclosures the developer must provide the inventor are a description of the services to be rendered, the date by which the services will be rendered, whether the invention developer will acquire a legal interest in the customer's invention, and statistics showing the number of customers who have profited from the developer's services. Invention developers must also post a bond with the State of Minnesota. If a contract for invention services does not comply with the law, its provisions are voidable by the customer unless the developer proves noncompliance due to a bona fide error. The inventor's rights cannot be waived.

### **Personal Solicitation Sales—Disclosure**

Before any personal solicitation every seller must, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose: the individual seller's name, the name of the business, firm or organization he/she represents, the identity of the kinds of goods or services he/she wishes to demonstrate or sell, and that he/she wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller must also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he/she represents. The disclosures required by this law must be made before the seller asks any questions or makes any statements except an initial greeting.

Certain organizations, such as non-profit organizations and newspaper carriers that are minor children, are exempt from the requirements of this law.

### **Prescription Drugs—Generically Equivalent Drugs**

A pharmacist who receives a prescription for a brand name legend drug may, with the consent of the purchaser, dispense any generically equivalent drug, unless the prescriber (physician, for example) has specifically indicated in writing that the brand name drug be dispensed.

### **Prescription Drugs—Drug Price Posting**

Pharmacists must post prices in their retail stores and answer telephone inquiries concerning prescription prices.

### **Private Trade Schools**

Private trade schools are required to permit the review of all advertising and contract forms by the Commissioner of Education. The use of false or deceptive representations in connection with the sale of courses is prohibited. All contracts must clearly state the cancellation rights of the individual student and the school's tuition refund policy. Further, schools which offer or imply a placement service must disclose to the Commissioner, and to prospective students, the percentage of graduates actually placed in the occupation for which they were trained.

### **Truth in Repairs**

If the cost of repairs to a motor vehicle, appliance, or dwelling place used primarily for personal, family, or household purposes is more than \$100 and less than \$2,000, then the consumer has a right to request a written estimate of the work. If the shop estimates the cost of repairs in writing, then it is prohibited from exceeding its estimate by more than 10 percent unless it receives the consumer's express permission to proceed. Unnecessary and unauthorized repairs are prohibited.



Keep in mind that the "10 percent over estimate" price limit for repairs only applies if you request and receive a written estimate. Furthermore, a shop may impose a charge for making the estimate, including charges for the disassembly, diagnosis, and reassembly necessary to make the estimate if it discloses that charge before making the estimate.

For a free pamphlet entitled, *Truth in Repairs Act*, contact the Consumer Protection Division, Attorney General's Office, 102 State Capitol, St. Paul, MN 55155.

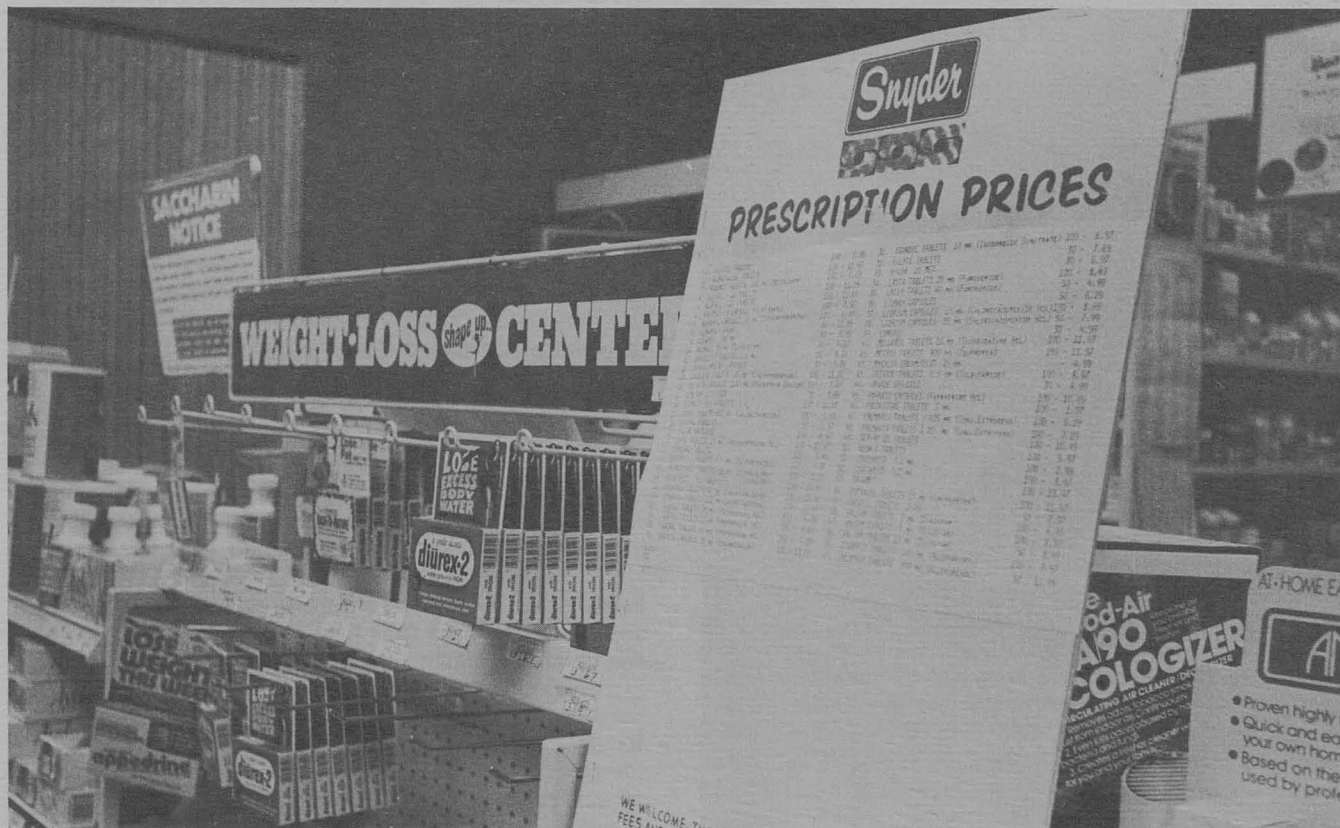
### Toys—Hazardous Toys

The importation, manufacture, sale, and distribution of hazardous toys is prohibited. The Director of the Office of Consumer Services of the Department of Commerce is authorized to test toys or other articles intended for use by children to determine if certain defined hazards are present, and to ban the sale or distribution in Minnesota of toys and articles determined to be hazardous.

### Warranties

A consumer's expectation of an implied warranty of merchantability (goods will work as expected) and fitness (goods will be fit for the purpose intended by the buyer and made known to the seller) must be honored by a merchant and cannot be disclaimed in a hidden writing. No disclaimer of warranties is effective unless a conspicuous writing states that the goods are sold with the entire risk as to quality and performance on the buyer.

### Posted prescription prices



## Federal Laws on Consumer Protection

The Federal Trade Commission (FTC) is a federal agency that enforces most of the federal laws on consumer protection.

The following are examples of federal laws that are enforced by the FTC.

### Credit Reporting Agencies

All persons have a right to be informed of what is in their credit reports.

If you contest the accuracy of any item of information, you may request the credit reporting agency to reinvestigate and record the current status of the information. If after re-investigation, such information is found to be inaccurate or can no longer be verified, it must be deleted from the report.

If the accuracy of the item is disputed, it must be clearly noted in the report, and the credit reporting agency must provide a copy of your statement explaining the disputed item along with each report.

### Debt Collection Practices

This law prohibits certain abusive practices in the collection of debts. For example, without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt:

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer

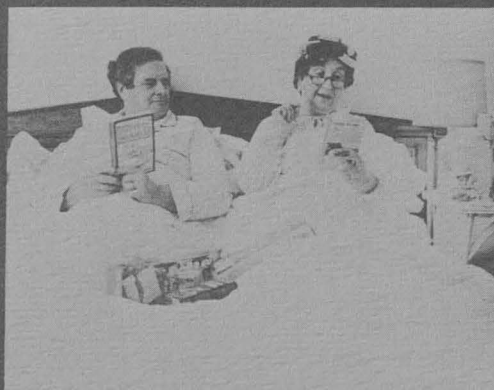
- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer
- (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

The law defines "debt collector" as a person who regularly collects or attempts to collect debts owed or due another. The law does *not* apply to attorneys collecting debts on behalf of clients, nor does it apply to creditors or employees of a creditor who are collecting debts on behalf of the creditor.

### Warranties

The U.S. Magnuson-Moss Warranty Act is a federal law designed to help you both before and after you buy a product.

### Labeling for information



## Labels Are Better Than Ever

They may not be on the best-seller list, but labels have become some of the best reading available to consumers.

New FDA regulations are resulting in labels that give:

- \* More Information
- \* More Precise Information
- \* More Understandable Information

Nutrition labeling on foods. Ingredient listing on cosmetics. Clearer instructions on nonprescription drugs. Full discussions of benefits and risks on prescription medicines. It's on the package or in the package. And it adds up to a revolution in consumer information and education.

**Have You Read Any Good Labels Lately?**

It helps you before you buy by giving you the right to see a warranty before you buy any product costing more than \$15. It helps you after you buy by making it easier to force a company to live up to its warranty.

There are two basic kinds of warranties—full and limited. A "full" warranty does not always cover the entire product. It may cover only the parts of the product specified in the warranty. You should always check to see exactly what parts are covered and which parts are not. Magnuson-Moss gives special meaning to these terms. The label "full" on a warranty means:

1. A defective product will be fixed or replaced free, including removal and installation of the product if it has to be taken to a repair shop.
2. The product will be fixed within a reasonable time after you complain.
3. You will not have to do anything unreasonable to obtain warranty service.
4. The warranty is good for anyone who owns the product during the warranty period.

A "limited" warranty is exactly what it sounds like. The coverage under a "limited" warranty is less than under a "full" warranty. The exact coverage will vary from product to product. For example, a "limited" warranty might:

1. Cover only parts, not labor.
2. Allow only a partial credit for a repair depending on how long you have owned the product.
3. Require you to return a heavy product to the store for repair.
4. Cover only the first purchaser.

Some parts of a product may be covered by a "full" warranty and other parts by only a "limited" warranty.

Lastly, it is important to know that Magnuson-Moss does not force a company to give a warranty. If a product is sold "as is" or "with all defects", you will have to pay for any repairs. Furthermore, it is important to remember that warranties are only as good as the company; if the company goes out of business, your warranty is worthless.

### Mail Order Merchandise

The Federal Trade Commission has a rule that gives you some rights when you order by mail. The mail order rule provides that you must receive the merchandise when the seller says you will, or if you are not promised delivery within a certain time period, the seller must ship the merchandise to you no later than 30 days after your order comes in.

If the seller cannot meet the promised delivery date (or the 30-day limit), he must tell you what the new shipping date will be and give you the option to either cancel the order and receive a full refund, or agree to the new shipping date. The seller must also give you a free way to send back your answer, such as a stamped envelope or a postage-paid postcard. If you don't answer, it means you agree to the shipping delay.

The seller must tell you if the shipping delay is going to be more than 30 days. You can then agree to the delay or, if you do not agree, the seller must return your money by the end of the first 30 days of the delay.

The rule does *not* apply to mail order photo finishing, magazine subscriptions, and other serial deliveries (except for the initial shipment); to mail order seeds and growing plants; to COD orders; or to credit orders where the buyer's account is not charged prior to the shipment of the merchandise.





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